IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROLAND C. ANDERSON,	§	
	§	No. 626, 2005
Plaintiff Below-Appellant,	§	
	§	
	§	Court Below—Superior Court
v.	§	of the State of Delaware
	§	in and for New Castle County
R.A. MIDWAY TOWING,	§	C.A. No. 05A-05-004
	§	
Defendant Below-Appellee.	§	
	§	

Submitted: May 26, 2006
Decided: July 14, 2006

Before **HOLLAND**, **BERGER** and **JACOBS**, Justices

O R D E R

This 14th day of July 2006, upon consideration of the appellant's opening brief and the record below,[1] it appears to the Court that:

(1) The plaintiff-appellant, Roland C. Anderson, filed an appeal from the Superior Court's December 5, 2005 order dismissing his appeal from an adverse decision of the Court of Common Pleas. Because Anderson's appeal was interlocutory and the Superior Court lacked jurisdiction to decide it, we hereby VACATE the Superior Court's order dismissing the appeal and REMAND this matter to the Superior Court so

[1] On April 20, 2006, counsel for the defendant filed a letter in the Court stating that he would not be filing an answering brief. On April 24, 2006, this Court ordered that the appeal would be decided on the basis of the opening brief and the record.

that it may, in turn, remand the matter to the Court of Common Pleas for trial and entry of a final judgment.

(2) The record reflects that, in May 2004, Anderson filed a replevin action in the Justice of the Peace Court against R.A. Midway Towing ("Midway"). In his complaint, Anderson claimed that Midway had mistakenly towed his car, a 1989 Audi 5000, to an auto body shop called Station Auto Body and that, as a result, the car had been lost. Anderson sought compensation for the value of the car. The case was scheduled for trial in the Justice of the Peace Court on July 12, 2004. On that date, the Justice of the Peace entered judgment against Anderson and in favor of Midway.

(3) On July 26, 2004, Anderson filed an appeal in the Court of Common Pleas. In its answer, Midway denied Anderson's allegations and further stated that Midway had been specifically instructed to deliver the car to Station Auto Body and that thereafter the car was sold at auction because the rental charges had not been paid. Anderson filed a motion for summary judgment and, on November 19, 2004, the Court of Common Pleas entered a default judgment against Midway due to its attorney's failure to appear for the hearing.

(4) Midway obtained new counsel, who filed a motion to set aside the default judgment. On January 14, 2005, the Court of Common Pleas granted the motion. On April 26, 2005, the Court of Common Pleas denied several motions filed by Anderson, including a motion for reargument and a motion for reconsideration of the order setting aside the default judgment. The Superior Court docket sheet reflects that Anderson filed an appeal in the Superior Court on May 17, 2005. The Court of Common Pleas docket sheet reflects that a motion to quash a non-party subpoena was re-scheduled for July 15, 2005[2] and that trial was scheduled for August 29, 2005. The motion to quash and the trial were subsequently postponed pending the outcome of Anderson's appeal to the Superior Court.

(5) On July 14, 2005, the Court of Common Pleas record was received in the Superior Court. The docket sheet notes that there was "no transcript." On November 9, 2005, the Superior Court judge assigned to Anderson's case informed him by letter that the transcript of the Court of Common Pleas trial, which it erroneously assumed had taken place on March 18, 2005, had to be received in the Superior Court within fifteen days or the case would be dismissed. By order dated December 5, 2005, the

[2] The Court of Common Pleas had mistakenly granted the motion to quash on March 18, 2005 and then rescheduled the motion for a later date.

Superior Court dismissed Anderson's appeal for failure to provide the transcript of the trial.[3]

(6) In this appeal, Anderson claims that the Superior Court erred and abused its discretion by dismissing his case. He contends that the Superior Court mistakenly believed he was appealing from the Court of Common Pleas' March 18, 2005 decision to grant a non-party's motion to quash a subpoena whereas he actually was appealing from the Court of Common Pleas' April 26, 2005 orders, which, among other things, denied his motions for reargument and for reconsideration of the order setting aside the default judgment.

(7) The April 26, 2005 orders of the Court of Common Pleas were interlocutory, and not final, orders.[4] While the Delaware Constitution confers jurisdiction upon this Court to decide interlocutory appeals,[5] it does not confer such jurisdiction upon the Superior Court. The Superior Court has statutory authority to decide appeals from decisions of the Court of Common Pleas.[6] However, such statutory authority is limited to " any final

[3] Following his appeal to this Court, Anderson filed two motions for reargument in the Superior Court. We remanded the matter to the Superior Court for consideration of those motions, both of which were denied.
[4] *Showell Poultry v. Delmarva Poultry Corp.*, 146 A.2d 794, 795-96 (Del. 1958).
[5] Del. Const. art. IV, § 11(1) (a).
[6] Del. Code Ann. tit. 10, § 1326.

order, ruling, decision or judgment" of the Court of Common Pleas.[7] Because the Court of Common Pleas had not yet entered a final judgment in this matter, the Superior Court was without jurisdiction to enter an order dismissing the case.

NOW, THEREFORE, IT IS ORDERED that the Superior Court's December 5, 2005 order dismissing Anderson's appeal is hereby VACATED. This matter is hereby REMANDED to the Superior Court for remand, in turn, to the Court of Common Pleas for trial and entry of final judgment.

BY THE COURT:

/s/ Carolyn Berger
Justice

[7] Id. See also Super. Ct. Civ. R. 72(b), providing that the notice of appeal to the Superior Court shall be "filed within 15 days from entry of the final judgment, order or disposition from which an appeal is permitted by law."